

REFERENCE TITLE: prior convictions and admissions; sentencing.

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1050

Introduced by
Senator Huppenthal

AN ACT

AMENDING SECTIONS 13-702 AND 13-702.01, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-702, Arizona Revised Statutes, is amended to
3 read:

4 13-702. Sentencing: definition

5 A. Sentences provided in section 13-701 for a first conviction of a
6 felony, except those felonies involving the discharge, use or threatening
7 exhibition of a deadly weapon or dangerous instrument or the intentional or
8 knowing infliction of serious physical injury upon another or if a specific
9 sentence is otherwise provided, may be increased or reduced by the court
10 within the ranges set by this subsection. Any reduction or increase shall be
11 based on the aggravating and mitigating circumstances contained in
12 subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
14 1. For a class 2 felony	4 years	10 years
15 2. For a class 3 felony	2.5 years	7 years
16 3. For a class 4 felony	1.5 years	3 years
17 4. For a class 5 felony	9 months	2 years
18 5. For a class 6 felony	6 months	1.5 years

19 B. The upper or lower term imposed pursuant to section 13-604,
20 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may
21 be imposed only if one or more of the circumstances alleged to be in
22 aggravation of the crime are found to be true by the trier of fact beyond a
23 reasonable doubt **OR ARE ADMITTED BY THE DEFENDANT, EXCEPT THAT AN ALLEGED**
AGGRAVATING CIRCUMSTANCE UNDER SUBSECTION C, PARAGRAPH 11 OF THIS SECTION
SHALL BE FOUND TO BE TRUE BY THE COURT, or in mitigation of the crime are
26 found to be true by the ~~trial judge~~ **COURT**, on any evidence or information
27 introduced or submitted to the court or the trier of fact before sentencing
28 or any evidence presented at trial, and factual findings and reasons in
29 support of such findings are set forth on the record at the time of
30 sentencing.

31 C. For the purpose of determining the sentence pursuant to section
32 13-710 and subsection A of this section, the trier of fact shall determine
33 and the court shall consider the following aggravating circumstances, **EXCEPT**
THAT THE COURT SHALL DETERMINE AN AGGRAVATING CIRCUMSTANCE UNDER PARAGRAPH 11
OF THIS SUBSECTION:

36 1. Infliction or threatened infliction of serious physical injury,
37 except if this circumstance is an essential element of the offense of
38 conviction or has been utilized to enhance the range of punishment under
39 section 13-604.

40 2. Use, threatened use or possession of a deadly weapon or dangerous
41 instrument during the commission of the crime, except if this circumstance is
42 an essential element of the offense of conviction or has been utilized to
43 enhance the range of punishment under section 13-604.

44 3. If the offense involves the taking of or damage to property, the
45 value of the property so taken or damaged.

1 4. Presence of an accomplice.

2 5. Especially heinous, cruel or depraved manner in which the offense
3 was committed.

4 6. The defendant committed the offense as consideration for the
5 receipt, or in the expectation of the receipt, of anything of pecuniary
6 value.

7 7. The defendant procured the commission of the offense by payment, or
8 promise of payment, of anything of pecuniary value.

9 8. At the time of the commission of the offense, the defendant was a
10 public servant and the offense involved conduct directly related to the
11 defendant's office or employment.

12 9. The victim or, if the victim has died as a result of the conduct of
13 the defendant, the victim's immediate family suffered physical, emotional or
14 financial harm.

15 10. During the course of the commission of the offense, the death of an
16 unborn child at any stage of its development occurred.

17 11. The defendant was previously convicted of a felony within the ten
18 years immediately preceding the date of the offense. A conviction outside
19 the jurisdiction of this state for an offense that if committed in this state
20 would be punishable as a felony is a felony conviction for the purposes of
21 this paragraph.

22 12. The defendant was wearing body armor as defined in section 13-3116.

23 13. The victim of the offense is at least sixty-five years of age or is
24 a disabled person as defined by section 38-492.

25 14. The defendant was appointed pursuant to title 14 as a fiduciary and
26 the offense involved conduct directly related to the defendant's duties to
27 the victim as fiduciary.

28 15. Evidence that the defendant committed the crime out of malice
29 toward a victim because of the victim's identity in a group listed in section
30 41-1750, subsection A, paragraph 3 or because of the defendant's perception
31 of the victim's identity in a group listed in section 41-1750, subsection A,
32 paragraph 3.

33 16. The defendant was convicted of a violation of section 13-1102,
34 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
35 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
36 committed while driving a motor vehicle and the defendant's alcohol
37 concentration at the time of committing the offense was 0.15 or more. For
38 the purposes of this paragraph, "alcohol concentration" has the same meaning
39 prescribed in section 28-101.

40 17. Lying in wait for the victim or ambushing the victim during the
41 commission of any felony.

42 18. The offense was committed in the presence of a child and any of the
43 circumstances exist that are set forth in section 13-3601, subsection A.

1 19. The offense was committed in retaliation for a victim's either
2 reporting criminal activity or being involved in an organization, other than
3 a law enforcement agency, that is established for the purpose of reporting or
4 preventing criminal activity.

5 20. The defendant was impersonating a peace officer as defined in
6 section 1-215.

7 21. The defendant was in violation of 8 United States Code section
8 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

9 22. The defendant used a remote stun gun or an authorized remote stun
10 gun in the commission of the offense. For the purposes of this paragraph:

11 (a) "Authorized remote stun gun" means a remote stun gun that has all
12 of the following:

13 (i) An electrical discharge that is less than one hundred thousand
14 volts and less than nine joules of energy per pulse.

15 (ii) A serial or identification number on all projectiles that are
16 discharged from the remote stun gun.

17 (iii) An identification and tracking system that, on deployment of
18 remote electrodes, disperses coded material that is traceable to the
19 purchaser through records that are kept by the manufacturer on all remote
20 stun guns and all individual cartridges sold.

21 (iv) A training program that is offered by the manufacturer.

22 (b) "Remote stun gun" means an electronic device that emits an
23 electrical charge and that is designed and primarily employed to incapacitate
24 a person or animal either through contact with electrodes on the device
25 itself or remotely through wired probes that are attached to the device or
26 through a spark, plasma, ionization or other conductive means emitting from
27 the device.

28 23. Any other factor that the state alleges is relevant to the
29 defendant's character or background or to the nature or circumstances of the
30 crime.

31 D. For the purpose of determining the sentence pursuant to section
32 13-710 and subsection A of this section, the court shall consider the
33 following mitigating circumstances:

34 1. The age of the defendant.

35 2. The defendant's capacity to appreciate the wrongfulness of the
36 defendant's conduct or to conform the defendant's conduct to the requirements
37 of law was significantly impaired, but not so impaired as to constitute a
38 defense to prosecution.

39 3. The defendant was under unusual or substantial duress, although not
40 such as to constitute a defense to prosecution.

41 4. The degree of the defendant's participation in the crime was minor,
42 although not so minor as to constitute a defense to prosecution.

43 5. Any other factor that is relevant to the defendant's character or
44 background or to the nature or circumstances of the crime and that the court
45 finds to be mitigating.

1 If the trier of fact finds at least one aggravating circumstance, the trial
2 court may find by a preponderance of the evidence additional aggravating
3 circumstances. In determining what sentence to impose, the court shall take
4 into account the amount of aggravating circumstances and whether the amount
5 of mitigating circumstances is sufficiently substantial to call for the
6 lesser term. If the trier of fact finds aggravating circumstances and the
7 court does not find any mitigating circumstances, the court shall impose an
8 aggravated sentence.

9 E. The court in imposing a sentence shall consider the evidence and
10 opinions presented by the victim or the victim's immediate family at any
11 aggravation or mitigation proceeding or in the presentence report.

12 F. Nothing in this section affects any provision of law that imposes
13 the death penalty, that expressly provides for imprisonment for life or that
14 authorizes or restricts the granting of probation and suspending the
15 execution of sentence.

16 G. Notwithstanding any other provision of this title, if a person is
17 convicted of any class 6 felony not involving the intentional or knowing
18 infliction of serious physical injury or the discharge, use or threatening
19 exhibition of a deadly weapon or dangerous instrument and if the court,
20 having regard to the nature and circumstances of the crime and to the history
21 and character of the defendant, is of the opinion that it would be unduly
22 harsh to sentence the defendant for a felony, the court may enter judgment of
23 conviction for a class 1 misdemeanor and make disposition accordingly or may
24 place the defendant on probation in accordance with chapter 9 of this title
25 and refrain from designating the offense as a felony or misdemeanor until the
26 probation is terminated. The offense shall be treated as a felony for all
27 purposes until such time as the court may actually enter an order designating
28 the offense a misdemeanor. This subsection does not apply to any person who
29 stands convicted of a class 6 felony and who has previously been convicted of
30 two or more felonies. If a crime or public offense is punishable in the
31 discretion of the court by a sentence as a class 6 felony or a class 1
32 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting
33 attorney:

34 1. Files an information in superior court designating the offense as a
35 misdemeanor.

36 2. Files a complaint in justice court or municipal court designating
37 the offense as a misdemeanor within the jurisdiction of the respective court.

38 3. Files a complaint, with the consent of the defendant, before or
39 during the preliminary hearing amending the complaint to charge a
40 misdemeanor.

41 H. For the purposes of this section, "trier of fact" means a jury,
42 unless the defendant and the state waive a jury in which case the trier of
43 fact means the court.

Sec. 2. Section 13-702.01, Arizona Revised Statutes, is amended to
read:

13-702.01. Exceptional circumstances; aggravation; mitigation; definition

5 A. Notwithstanding section 13-702, subsection A, if a person is
6 convicted of a felony without having previously been convicted of any felony
7 and if ~~the trier of fact finds beyond a reasonable doubt that~~ at least two
8 aggravating factors listed in section 13-702, subsection C apply, the court
9 may increase the maximum term of imprisonment otherwise authorized for that
10 offense up to the following maximum terms:

- | | |
|-------------------------|------------|
| 1. For a class 2 felony | 12.5 years |
| 2. For a class 3 felony | 8.75 years |
| 3. For a class 4 felony | 3.75 years |
| 4. For a class 5 felony | 2.5 years |
| 5. For a class 6 felony | 2 years |

16 B. Notwithstanding section 13-702, subsection A, if a person is
17 convicted of a felony without having previously been convicted of any felony
18 and if the court finds that at least two mitigating factors listed in section
19 13-702, subsection D apply, the court may decrease the minimum term of
20 imprisonment otherwise authorized for that offense down to the following
21 minimum terms:

- | | |
|-------------------------|----------|
| 1. For a class 2 felony | 3 years |
| 2. For a class 3 felony | 2 years |
| 3. For a class 4 felony | 1 year |
| 4. For a class 5 felony | 6 months |
| 5. For a class 6 felony | 4 months |

27 C. Notwithstanding section 13-604, subsection A or B, if a person is
28 convicted of a felony offense and has one historical prior felony conviction
29 and if ~~the trier of fact finds beyond a reasonable doubt that~~ at least two
30 aggravating factors listed in section 13-702, subsection C apply, the court
31 may increase the maximum term of imprisonment otherwise authorized for that
32 offense up to the following maximum terms:

- | | |
|-------------------|-------------|
| 1. Class 2 felony | 23.25 years |
| 2. Class 3 felony | 16.25 years |
| 3. Class 4 felony | 7.5 years |
| 4. Class 5 felony | 3.75 years |
| 5. Class 6 felony | 2.75 years |

38 D. Notwithstanding section 13-604, subsection A or B, if a person is
39 convicted of a felony offense and has one historical prior felony conviction
40 and if the court finds that at least two mitigating factors listed in section
41 13-702, subsection D apply, the court may decrease the minimum term of
42 imprisonment otherwise authorized for that offense down to the following
43 minimum terms:

1. Class 2 felony 4.5 years
2. Class 3 felony 3.5 years

1	3. Class 4 felony	2.25 years
2	4. Class 5 felony	1 year
3	5. Class 6 felony	9 months

4 E. Notwithstanding section 13-604, subsection C or D, if a person is
5 convicted of a felony offense and has two or more historical prior felony
6 convictions and ~~if the trier of fact finds beyond a reasonable doubt that~~ at
7 least two aggravating factors listed in section 13-702, subsection C apply,
8 the court may increase the maximum term of imprisonment otherwise authorized
9 for that offense up to the following maximum terms:

10	1. Class 2 felony	35 years
11	2. Class 3 felony	25 years
12	3. Class 4 felony	15 years
13	4. Class 5 felony	7.5 years
14	5. Class 6 felony	5.75 years

15 F. Notwithstanding section 13-604, subsection C or D, if a person is
16 convicted of a felony offense and has two or more historical prior felony
17 convictions and if the court finds that at least two mitigating factors
18 listed in section 13-702, subsection D apply, the court may decrease the
19 minimum term of imprisonment otherwise authorized for that offense down to
20 the following minimum terms:

21	1. Class 2 felony	10.5 years
22	2. Class 3 felony	7.5 years
23	3. Class 4 felony	6 years
24	4. Class 5 felony	3 years
25	5. Class 6 felony	2.25 years

26 G. The upper or lower term imposed pursuant to this section may be
27 imposed only if at least two of the aggravating circumstances are found
28 beyond a reasonable doubt to be true by the trier of fact **OR ARE ADMITTED BY**
THE DEFENDANT, EXCEPT THAT AN AGGRAVATING CIRCUMSTANCE UNDER SECTION 13-702,
SUBSECTION C, PARAGRAPH 11 SHALL BE FOUND TO BE TRUE BY THE COURT, or in
31 mitigation of the crime are found to be true by the ~~trial judge~~ COURT, on any
32 evidence or information introduced or submitted to the court or the trier of
33 fact before sentencing or any evidence presented at trial, and factual
34 findings and reasons in support of these findings are set forth on the record
35 at the time of sentencing.

36 H. The court in imposing sentence shall consider the evidence and
37 opinions presented by the victim or the victim's immediate family at any
38 aggravation or mitigation proceeding or in the presentence report.

39 I. The court shall inform all of the parties before sentencing occurs
40 of its intent to increase or decrease a sentence pursuant to this
41 section. If the court fails to inform the parties, a party waives its right
42 to be informed unless the party timely objects at the time of sentencing.

43 J. For the purposes of this section, "trier of fact" means a jury,
44 unless the defendant and the state waive a jury in which case the trier of
45 fact means the court.